

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 879 of 1996

with  
Cri.Misc. Application No.2934 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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LAKHANI PANJARAPOLE

Versus

STATE OF GUJARAT

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Appearance:

MR SP HASURKAR for Petitioner  
PUBLIC PROSECUTOR for Respondent No. 1  
UNSERVED AS REFUSED for Respondent No. 2

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 10/10/96

ORAL JUDGEMENT

As these two proceedings are interconnected and arising from one and the same matter and as the petitioners and respondents in both the proceedings are one and the same, I proceed to dispose of these petitions by this common order.

2. Misc. Cri. Application No. 879/96 is filed against the order passed by the learned JMFC, Deesa in Criminal Case No. 915/95; whereas Misc. Cri. Application No. 2934/96 is filed to declare that the petitioner is entitled to maintenance charges at the rate of Rs. 9/- per cattle per day as regards the cattle which were in its custody as per the order passed by the learned Magistrate in criminal case No. 915/95 and to modify the order of this court passed in Spl. Cri. Application No. 477/96.

3. Cri. Case No. 915/95 was registered in the court of JMFC, Deesa for the alleged offence punishable u/s 11(i) of Prevention of Cruelty to the Animals Act, 1960 (hereinafter referred to as the Act). While registering the FIR in the said case, the petitioner had taken into custody the animals i.e. sheep and goat and the custody of the said sheep and goats were given to the present petitioner. Subsequently, the Magistrate had passed an interim order under section 451 by which he ordered to give custody of the said sheep and goats to the owner but it seems that the present petitioner has not obeyed the said order and therefore, Spl. Cri. Application No. 477/96 was filed in this court. Said application was decided on 1.7.96 in favour of the accused-owner of the cattle and the present petitioner was directed to hand over the custody to the owner in whose favour the order was passed. Said order passed by this court was challenged before the Apex Court and the order of this court has become final and conclusive as regards the handing over custody of the cattle. In view of the same, now there is no question of any modification of the order passed by this Court. Therefore, that prayer of the petitioner in Misc. Cri. Application No. 2934/96 will have to be rejected.

4. As regards the claim of the petitioner in Misc. Cri. Application No. 2934/96 to hold and declare that the petitioner is entitled to receive maintenance charges at the rate of Rs. 9/- per cattle in view of the provisions of section 28 of the Act and also under other sections of the said Act in my view, such a claim could not be entertained directly by this court. The claimant i.e. the person who is given the interim custody of the cattle by the order of the Court will have to apply before the JMFC who has handed over the custody to him and make the claim of the amount which he claims to be entitled for maintaining said cattle because it would be a question of fact as to what he is entitled and upto what period. The question regarding period is more

important in view of the fact that the petitioner had not handed over custody of the cattle inspite of the orders of the court.

5. Learned advocate for the petitioner vehemently urged before me that the petitioner is entitled to retain the custody of the cattle by way of exercising his lien towards his dues on account maintaining of the cattle, but the petitioner has no such lien in law. The petitioner is given custody of the cattle by the order of the court and as per the order of the court, he has to part with the custody of the cattle. The claim of the petitioner that he has got a right under the provisions of the said Act for getting charges towards looking after and maintenance of cattle would be a claim to be entertained and to be decided as per the provisions of law and particularly as per the provisions of the said Act. Therefore, the contention of the learned advocate for the petitioner that the petitioner is entitled to retain the cattle in his hand, is not at all tenable and acceptable. As a matter of fact the petitioner's act in not handing over the cattle as per the order of the court is not only unjustified but is likely to put him in jeopardy. The petitioner should forthwith hand over the custody of the cattle to the petitioner. He has to file a proper application before the learned JMFC by whose order, the petitioner has got custody, for the maintenance of the cattle.

6. As regards Cri. Misc. Application No. 879/96 the petitioner has contended that the order of the learned Magistrate should be quashed and set aside only as regards condition no.3. The whole of the order passed by the learned Magistrate was the subject matter of Spl.Cri.Appln.No. 477/96 and that application has been decided. Therefore, said order merges in the final order in 477/96. However, I would like to make it clear that the order of the learned Magistrate dated 27.3.95 in cri.case no. 915/95 was only an interlocutory order and condition no.3 imposed by him in the said order was in the nature of inter locutory order and in condition no.3 he has mentioned that the cattle which were given in possession of the petitioner were to be maintained by the petitioner by spending money out of his own pocket. That observation of spending money out of pocket was necessary in the said order because it was an interlocutory order and unless there was a direction as to who would spend for the maintenance of the cattle, the cattle would have remained starving and there would not have been any feeding to them. The custody of the cattle

has been given to the petitioner and therefore, the expenses towards the maintenance of the cattle was to be of the petitioner Panjra Pole and the same was only by way of interim arrangement till the final decision as regards the liability of the maintenance of cattle. Thus I hold that in view of my order in Cri.Misc. Application No.2934/96 as well as decision in Spl.Cri.Application No. 477/96 it is not necessary to grant any relief sought in this petition except making clear the order passed by the Magistrate as indicated above. I therefore, dismiss this petition also.

7. L.A. for the petitioner requests to stay the order passed by this court. In my opinion by staying the operation of this order, it will be allowing the petitioner to flout the orders of the court as regards handing over possession of the cattle which order has been confirmed by the Apex Court, I therefore, reject this prayer.

Notice discharged in both the matters.

(S.D.Pandit.J)